IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Date of Decision :22nd August, 2007.

1.RFA.No.252 of 2004.

L.A.C. and another. …Appellants.

Versus:

Bhagat Ram and others. …Respondents.

2.RFA.No.227 of 2005.

L.A.C. and another. …Appellants.

Vs.

Daya Ram and others. …Respondents.

3.RFA.No.8 of 2005.

L.A.C. and another. …Appellants.

Vs.

Krishan Chand and others. …Respondents.

4.RFA.No.129 of 2005.

L.A.C. and another. …Appellants.

Vs.

Devi Chand …Respondent.

5**. RFA.No.465 of 2004.**

L.A.C. and another. …Appellants.

Vs.

Budhi Ram and others. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the appellants: Mr.C.B.Singh, Dy.Advocate General.

For Respondents. Mr.Dinesh Kumar Sharma, Advocate.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Sanjay Karol, J .

The present appeals arise out of the different awards passed by the different Courts in different Land Reference Petitions filed by land owners, whose lands were acquired by the same notification for the same public purpose, namely, construction of `Bakhalag-Baproon-Tall road. The courts below, in all of the awards have referred to and relied upon the award dated 28th July, 2003 passed by Additional District Judge, Solan in Land Reference No.26-S/4 of 2001 which is the subject matter of challenge before this Court in RFA.No. 252 of 2004 titled as L.A.C. and another Vs. Bhagat Ram and others, therefore, all these appeals are being decided together by this common judgment.

The brief facts of each case, however, are mentioned herein separately as under:

RFA.No.252 of 2004.

For the public purpose, namely, construction of Bakhalag-Bapdoon-Tall road, the State of Himachal Pradesh published a Notification dated 6th June, 1994 under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the` Act') for acquisition of the respondents land ad-measuring 3-7 bighas comprising Khasra No. 217/16/1, 218/16/1 and 218/16/3 situate in village Bawan,Tehsil Arki, District Solan. The Collector passed its award No.11/97 on 5th November, 1997, awarding compensation as under:

1. Mazrua (cultivated) Rs.39,000/- per bigha.
2. Gair Mazrua (uncultivated) Rs. 6,000/- per bigha.

The value of the respondents' land, being un-cultivated, was assessed at Rs.6,000/- per bigha.

Aggrieved by the same, the land owners filed Reference Petition No. 26-S/4 of 2001 which was decided in terms of impugned award dated 28th July, 2003.

RFA.No.227 of 2005.

For the public purpose, namely, construction of Bakhalag-Baproon-Tall road, the State of Himachal Pradesh published a Notification dated 6th June, 1994 under Section 4 of the `Act' for acquisition of the petitioners' land ad-measuring 2-10 bigha comprising Khasra No. 47/1 situate in village Bawan, Tehsil Arki, District Solan . The Collector passed its award No.10/97 on 5th November, 1997 awarding compensation as under:

1. Mazrua (cultivated) Rs.39,000/- per bigha.
2. Gair Mazrua (uncultivated) Rs. 6,000/- per bigha.

The value of the respondents' land, being un-cultivated, was assessed at Rs.6,000/- per bigha.

Aggrieved by the same, the land owners filed Reference Petition No. 50 FT/4 of 2004/2002 which was decided in terms of impugned award dated 4th November, 2004.

RFA.No.8/2005

For the public purpose, namely, construction of Bakhalag-Baproon-Tall road, the State of Himachal Pradesh published a Notification dated 6th June, 1994 under Section 4 of the Act for acquisition of the petitioners' land ad-measuring 3-11 bighas comprising Khasra No. 104/1 and 105/1 situate in village Tall, Tehsil Arki, District Solan. The Collector passed its award No.10/97 on 5th November, 1997, awarding compensation as under:

1. Mazrua (cultivated) Rs.39,000/- per bigha.
2. Gair Mazrua (uncultivated) Rs. 6,000/- per bigha.

The value of the respondents' land, being un-cultivated, was assessed at Rs.6,000/- per bigha.

Aggrieved by the same, the land owners filed Land Reference Petition No. 3-S/4 of 2003/2002 which was decided in terms of impugned award dated 30th September, 2004.

RFA.No.129/2005

For the public purpose, namely, construction of Bakhalag-Baproon-Tall road, the State of Himachal Pradesh published a Notification dated 6th June, 1994 under Section 4 of the `Act' for acquisition of the petitioners' land ad-measuring 15-14 bighas comprising Khasra No. 116/1, 116/4, 170/117/1, 171/117/1, 171/117/3, 92/1, 93/1, 197/98/1, 196/98/1, 201/102/1, 202/102/1, 203/102/1, 167/103/1, 104/1, 105/1 and 106/1 kita 16 in village Tall, Tehsil Arki, District Solan. The Collector passed its award No.10/97 on 5th November, 1997,awarding compensation as under:

1. Mazrua (cultivated) Rs.39,000/- per bigha.
2. Gair Mazrua (uncultivated) Rs. 6,000/- per bigha.

The value of the respondents' land, being un-cultivated, was assessed at Rs.6,000/- per bigha.

Aggrieved by the same, the land owners filed Case No.56 FT/4 of 2004/2002 which was decided in terms of impugned award dated 6th January, 2005.

RFA.No.465/2004

For the public purpose, namely, construction of Bakhalag-Baproon-Tall road, the State of Himachal Pradesh published a Notification dated 6th June, 1994 under Section 4 of the `Act' for acquisition of the petitioners' land ad-measuring 18 biswas comprising Khasra No. 170/117/1 situate in village Tall, Tehsil Arki, District Solan. The Collector passed its award No.10/97 on 5th November, 1997, awarding compensation as under:

1. Mazrua (cultivated) Rs.39,000/- per bigha.
2. Gair Mazrua (uncultivated) Rs. 6,000/- per bigha.

The value of the respondents' land, being un-cultivated, was assessed at Rs.6,000/- per bigha.

Aggrieved by the same, the land owners filed Case No.23 FT/4 of 2004/2002 which was decided in terms of impugned award dated 3rd September, 2004.

In all of the impugned awards, the courts below have uniformly awarded a sum of Rs.1,00,000/- per bigha for acquisition of the respondents' land. Perusal of all the impugned awards would show that the evidence with regard to the advantages, quality, user and proximity of the acquired land is similar to that of the land which is the subject matter of Appeal No.252 of 2004, therefore, the facts of RFA. No. 252 of 2004 are being referred to.

Through witnesses, namely Bhagat Ram (PW-1), Daya Ram (PW-2), Dhani Ram (PW-3) and Jai Dayal (PW-4), it has come on record that two villages Bawan and Tall fall adjacent to the Notified Area Committee, Arki. In close vicinity, the Government has set up a colony for housing the government employees who were working in and around the notified area of Arki. The land in question has all amenities and facilities including electricity and drinking water etc.. The motorable road leading to the villages touch the petitioners' acquired land and the government has also set up a Primary Health Centre, Veterinary Hospital, Panchayat Ghar, Middle School, Bus Stand and a Government Degree College just at a distance of 1 ½ Kms. According to these witnesses, the market value of the land is approximately Rs.3,00,000/- per bigha which is duly proved from the sale deed Ext.PW/1/B, whereby five biswas of land was sold to the Electricity Department for a sum of Rs.25,000/-. The land sold in terms of the said sale deed is of the same category/classification as that of the acquired land but is situated at a disadvantages location and is far away from the road. PW-3 Dhani Ram has further deposed that the acquired land abuts another village namely, Bakhalag which also has all the amenities as mentioned herein-above. In fact, from the statement of the witnesses, it is clear that the

acquired land is situated within two townships and has great potential of the same being put to commercial use and also increase in value of price.

The witnesses have also proved a copy of the sale deed (Ext.PW-1/A), whereby four biswas of land have been sold for Rs.1,00,000/- on 22nd December, 1992. Relying upon the entire material on record, the Courts below assessed the value of the acquired land at Rs.1,00,000/- per bigha which was found to be reasonable compensation payable to the land owners for acquisition of their lands.

Importantly, no evidence has been led by the State Learned Deputy Advocate General has assailed the impugned award on the ground that the value of Ext.PW-1/B which pertains to the small piece of land could not have been made the basis for comparing the large parcels of the lands which are the subject matter of the present acquisition.

The learned counsel for the respondents, however, has referred to and relied upon the decision of the apex Court in ***Thakarsibhai Devjibhai and others Vs. Executive Engineer, Gujarat and another,*** 2001 (9) SCC, 584 to contend that the total acquired land measuring 3-4 bighas is actually owned by five co-shares and their individual land holdings varies between 4 biswas to 13 biswas.

Relying upon the ratio of law as laid down in *Thakarsibhai's* case (supra), I am of the view that the acquisition of each land owners individual share holding could not amount to such a larger area so as not to be compared with the sale Ext.PW-1/B. Each land owners holding is of a small area and largerness is merely when the each landholder's land is clubbed together. Evidence of comparability between the acquired land and the sale transaction land, in every respect has already come on record and discussed hereinabove.

Therefore after considering the entire material on record, I am of the view that the Courts below have correctly determined the compensation payable to the land owners for acquisition of their lands.

For the aforesaid reasons, I find no infirmity, irregularity or perversity in the impugned awards and therefore all the aforesaid appeals are consequently dismissed with no order as to costs. Miscellaneous applications, if any, are disposed of.

(Sanjay karol),
Judge.

August 22nd , 2007(R)